

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into the Service
Quality Standards for All Telecommunications
Carriers and Revisions to General Order 133-B.

Rulemaking 02-12-004
(Filed December 5, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
NOTICE OF INTENT TO SEEK COMPENSATION**

As required by Pub. Util. Code § 1804(b)(1), this ruling finds that The Utility Reform Network (TURN) is a customer eligible for an award of compensation, has met the significant financial hardship test, and is eligible for compensation in this proceeding.

Timeliness

Section 1804(a)(1) provides that a Notice of Intent (NOI) must be filed and served within 30 days after the prehearing conference (PHC), unless no PHC is held or the proceeding is expected to be completed in less than 30 days. No PHC has been held in this case, and no deadline has been established for filing NOIs. TURN timely filed its NOI on May 5, 2003.

Eligibility

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a "customer" and that participation without compensation would pose a significant financial hardship.

Customer Status

Section 1802(b) defines the term "customer" as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers. . .

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires a participant to specifically identify in its NOI how it meets the definition of customer and, if it is a group or organization, provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. (Decision (D.) 98-04-059, *mimeo.*, at pp. 30-32; *see, also*, fn. 13-16.) Further, a group or organization should indicate the percentage of its membership comprised of residential ratepayers. (See D.98-04-059, *mimeo.*, at pp. 83 and 88.)

TURN seeks to participate as a formally organized group authorized to represent the interests of residential customers, the third category of customer. TURN has a long history of representing the interests of residential and small commercial customers of California's utility companies before the Commission. TURN has provided relevant portions of its articles of incorporation in A.9802 017 and in A.99-12-024. TURN states those articles of incorporation have not changed. TURN has approximately 30,000 dues-paying members and believes the vast majority of those members are residential. TURN is a customer

as that term is defined in §1802(b) and is an organization authorized by its articles of incorporation to represent the interests of residential customers.

Significant Financial Hardship

Section 1802(g) defines “significant financial hardship” as:

“either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocates fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.”

TURN submitted its demonstration of financial hardship in Rulemaking (R.) 02-07-050. By March 25, 2003 Administrative Law Judge Ruling, TURN was deemed to have met its statutory showing of significant financial hardship. It was noted in that ruling that TURN had been qualified in every year since 1986 and that intervenor compensation comprises approximately 44% of TURN’s total income. It is reasonable to consider TURN’s demonstration in R.02-07-050 in this proceeding.

Further, to be eligible for compensation as a customer of the third type, the financial hardship test requires the economic interest of TURN’s individual members be small in comparison to the costs of effective participation. This rulemaking indirectly affects utility ratepayers’ economic interests. Here the Commission is reviewing service quality measures for services offered by different categories of carriers and considering standards, service quality assurance mechanisms, and revisions to General Order (GO) 133-B. Although service quality rules have economic implications, those effects for ratepayers of

the type TURN represents are small in comparison to the costs of participation. TURN meets the significant financial hardship test.

Nature and Extent of Planned Participation; Estimate of Compensation

Section 1804(a)(2)(A) provides that the NOI shall include both a statement of the nature and extent of a customer's planned participation and an itemized estimate of the compensation that the customer expects to request.

Planned Participation

The Commission has stated that the information provided on planned participation should provide the basis for a critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is nonduplicative, and (3) that participation is necessary for a fair determination of the proceeding. The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, *mimeo.*, at pp. 27-28, 31-33.) Parties are encouraged to coordinate to ensure that efforts are not duplicated.

TURN expects to be an active party in this proceeding and already has filed a number of pleadings. In its Opening Comments, TURN proposed specific service quality measures and appropriate revisions to GO 133-B. TURN will coordinate its participation with other intervenors to prevent unnecessary duplication of effort.

Participation in Commission proceedings by parties representing the full range of affected interests is important and ensures a fully developed record. TURN may represent customer interests that will be underrepresented if TURN is unable to participate effectively.

Estimate of Compensation

Pub. Util. Code § 1804(a)(2)(A)(ii) requires that the NOI include an itemized estimate of compensation the intervenor expects to request.

TURN estimates that the costs of its staff attorneys, experts and all other direct expenses will be approximately \$175,000. TURN includes an itemized estimate of its expenses as follows:

Attorney/Category	Estimated Hours	Hourly Rate	Estimated Cost
William R. Nusbaum	250	350	\$87,500
Christine Mailloux	100	250	\$25,000
Regina Costa	100	200	\$20,000
Consulting Expenses for JBS Energy, Inc.			\$35,000
Other Direct Expenses			\$7500
TOTAL			\$175,000.00175,000

TURN will address the reasonableness of the requested hourly rates in its Request for Compensation. TURN's itemization at this time fulfills the requirements of § 1804(a)(2)(A)(ii). This ruling does not ensure compensation.

TURN is cautioned that it should carefully document the number of hours and hourly fees for counsel and carefully allocate such expenses to specific issues pursued in this proceeding. TURN should also review Commission orders and, in preparing its compensation request, take into account the Commission's practices for reducing hourly rates and hours claimed, e.g., for travel time and time spent on the compensation request itself.

No party has indicated opposition to TURN's NOI. After consulting with the Assigned Commissioner, I find that TURN should be eligible for an award under the intervenor compensation program.

IT IS RULED that:

1. The Utility Reform Network (TURN) has met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible for compensation in this proceeding. TURN is a customer as that term is defined in § 1802(b) and is authorized by its articles of incorporation to represent the interests of residential ratepayers.
2. TURN has fulfilled the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.
3. A finding of eligibility in no way assures compensation.
4. Parties requesting compensation shall make every effort to reduce duplication of contribution.

Dated June 27, 2003, at San Francisco, California.

/s/ JANICE GRAU
Janice Grau
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notice of Intent to Seek Compensation on all parties of record in this proceeding or their attorneys of record.

Dated June 27, 2003, at San Francisco, California.

/s/ HELEN FRIEDMAN
Helen Friedman

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.